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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/780,135 | 02/17/2004 | William A. Tesh | 02041-06 | 9679 |

7590 11/17/2004
Walter L. Beavers
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EXAMINER
LOFDAHL, JORDAN M

| | |
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| ART UNIT 3644 | PAPER NUMBER |
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DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/780,135

Applicant(s)

TESH, WILLIAM A.

Examiner

Jordan Lofdahl

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-27 and 33-42 is/are pending in the application.
- 4a) Of the above claim(s) 37-42 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33-36 is/are allowed.
- 6) ☒ Claim(s) 21-26 is/are rejected.
- 7) ☒ Claim(s) 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 21-27 and 33-36, drawn to a method of monitoring termite activity, classified in class 43, subclass 124.
- II. Claims 37-39, drawn to a termite monitor classified in class 43, subclass 132.1.

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus can also be used to practice killing the termites instead of monitoring them.

During a telephone conversation with Walter Beavers on 11/2/04 a provisional election was made with traverse to prosecute Invention I, claims 21-27 and 33-36. Affirmation of this election must be made by applicant in replying to this Office action. Claims 37-42 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katz et al. (6023879)

As to claim 21, Katz et al. discloses method steps of contacting a building owner (col. 3, lines 45-51, since there is a contract with licensed pest control operator, it is inherent that the contract is with the owner or a representative of the owner of the building and therefore the owner is contacted); inspecting and determining if the building can qualify for an assurance protection program (col. 3, lines 17-21); contracting with the building owner (col. 3, lines 45-51); placing a series of monitors on the ground surface; lifting a cap (54) to observe termite activity. Not disclosed is a flap. In the container art, a cap and a flap are read as functional equivalents that cover an opening to a container. Therefore, It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the cap of Katz et al. with a flap. Disclosed is a step of closing the flap (it is inherent that the user is going to close the flap after viewing the contents inside the device) and determining action to be taken (col. 3, lines 17-21; it is inherent that action is going to be taken by the user if the device is infested with termites). Disclosed defining a zone. Not disclosed is the zone extending

Art Unit: 3644

approximately 15cm from the building. It would have been obvious to one having ordinary skill in the art at the time the invention was made to define the zone approximately 15cm from the building; since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

As to claim 22, not disclosed are approximately 12m intervals. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the method step of placing the monitors in approximately 12m intervals; since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

As to claim 23, disclosed is a planar base (read as a side wall) defining feeding ports and wafer (cellulose) positioned on the base.

As to claim 24, disclosed is a history of the building (col. 2, lines 52-57).

As to claim 25, disclosed is the step of inspecting the foundation and structural elements (col. 2, lines 52-61).

As to claim 26, not disclose is the step of placing monitors approximately within 15 cm of the building. It would have been obvious to one having ordinary skill in the art at the

Art Unit: 3644

time the invention was made to define the zone approximately 15cm from the building; since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Allowable Subject Matter

Claim 27 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 33-36 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record failed to show either alone and/or in combination the method step of closing the flap of each monitor by first folding the wall along the wafer case and then folding the flap to cover the wafer case so the flap is substantially parallel to the base.

Conclusion

Art Unit: 3644


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jordan Lofdahl whose telephone number is 703.605.1217. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703.305.7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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